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IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1973  
No. 72-1322

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CAROLYN BRADLEY, *et al.*,

*Petitioners,*

—v.—

THE SCHOOL BOARD OF THE CITY OF RICHMOND, *et al.*,  
*Respondents.*

ON A WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE FOURTH CIRCUIT

**BRIEF OF THE LAWYERS' COMMITTEE FOR CIVIL  
RIGHTS UNDER LAW AS *AMICUS CURIAE*  
IN SUPPORT OF PETITIONERS  
CAROLYN BRADLEY, *ET AL.***

CECIL WRAY, JR.

*Counsel for Amicus Curiae*  
Debevoise, Plimpton, Lyons  
& Gates  
299 Park Avenue  
New York, New York 10017

GEORGE N. LINDSAY

WILLIAM H. McDAVID

Debevoise, Plimpton,  
Lyons & Gates

DAVID S. TATEL

ARMAND DERFNER

Lawyers' Committee for  
Civil Rights Under Law

## INDEX

	PAGE
Interest of the <i>Amicus Curiae</i> .....	1
Introduction .....	2
Questions Presented .....	3
Summary of Argument .....	3
Argument .....	5

## CITATIONS

### Cases:

<i>Bell v. Hood</i> , 327 U.S. 678 (1946) .....	11, 12
<i>Brewer v. School Board of the City of Norfolk</i> , 456 F.2d 943 (4th Cir.) cert. denied 406 U.S. 933 (1972) .....	10-11
<i>J. I. Case Co. v. Borak</i> , 377 U.S. 426 (1964) .....	11
<i>Cole v. Hall</i> , 462 F.2d 777 (2d Cir. 1972), aff'd — U.S. —, 93 S. Ct. 1943 (1973) .....	13
<i>Cooper v. Allen</i> , 467 F.2d 836 (5th Cir. 1972) .....	12
<i>Deckert v. Independence Shares Corp.</i> , 311 U.S. 282 (1940) .....	11
<i>Donahue v. Staunton</i> , 471 F.2d 475 (7th Cir. 1972), cert. denied — U.S. —, 93 S. Ct. 1419 (1973) ..	12
<i>Fleischmann Distilling Corp. v. Maier Brewing Co.</i> , 386 U.S. 714 (1967) .....	15, 17

	PAGE
<i>Gartner v. Soloner</i> , 384 F.2d 348 (3d Cir. 1967), cert. den. 390 U.S. 1040 (1968) .....	13
<i>Hall v. Cole</i> , — U.S. —, 93 S. Ct. 1943 (1973) ....	6, 8, 9, 10, 11, 13, 15, 17
<i>Hecht Co. v. Bowles</i> , 321 U.S. 321 (1944) .....	11
<i>Johnson v. Nelson</i> , 325 F.2d 646 (8th Cir. 1963) .....	13
<i>Knight v. Auciello</i> , 453 F.2d 852 (1st Cir. 1972) .....	12
<i>La Raza Unida v. Volpe</i> , 57 F.R.D. 94 (N.D. Cal. 1972), appeal docketed, No. 73-1145, 9th Cir., Jan. 29, 1973 .....	14
<i>Lee v. Southern Home Sites Corp.</i> , 444 F.2d 143 (5th Cir. 1971) .....	12
<i>Mills v. Electric Auto-Lite Co.</i> , 396 U.S. 375 (1970) ..	6, 7, 8, 9, 10, 11, 12, 15, 17
<i>Mitchell v. DeMario Jewelry, Inc.</i> , 361 U.S. 288 (1960) .....	11, 12
<i>Newman v. Piggie Park Enterprises</i> , 390 U.S. 400 (1968) .....	12
<i>Porter v. Warner Holding Co.</i> , 328 U.S. 395 (1946) ..	11, 15
<i>Rice v. Commonwealth</i> , 188 Va. 224, 49 S.E.2d 342 (1948) .....	10
<i>Richmond School Board v. Virginia State Board of Education</i> , — U.S. —, 93 S. Ct. 1952 (1973) ....	2

<i>Sims v. Amos</i> , 340 F. Supp. 691 (M.D. Ala.), <i>aff'd</i> , 409 U.S. 942 (1972) .....	10, 19
<i>Sprague v. Ticonic National Bank</i> , 307 U.S. 161 (1939) .....	6, 7, 8
<i>Swann v. Charlotte-Mecklenburg Board of Educa- tion</i> , 402 U.S. 1 (1971) .....	11
<i>Trustees v. Greenough</i> , 105 U.S. 527 (1882) .....	6, 7, 8
<i>Virginian Ry. Co. v. System Federation No. 40, Rail- way Employees</i> , 300 U.S. 515 (1937) .....	12
<i>Yablonski v. United Mine Workers of America</i> , 466 F.2d 424 (D.C. Cir. 1972), <i>cert. denied</i> — U.S. —, 93 S. Ct. 2729 (1973) .....	9

## Statutes:

Emergency School Aid Act of 1972, 86 Stat. 235, § 718 .....	5
42 U.S.C. § 1983 .....	16, 17
Civil Rights Act of 1964, § 204(a), 78 Stat. 244, 42 U.S.C. § 2000a-3(a) .....	17

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**BRIEF OF THE LAWYERS' COMMITTEE FOR CIVIL  
RIGHTS UNDER LAW AS *AMICUS CURIAE***

Pursuant to Rule 42(2) of the Rules of this Court, the Lawyers' Committee for Civil Rights Under Law has requested and received the consent of the parties to this action to its filing a brief as *amicus curiae*.

**INTEREST OF THE *AMICUS CURIAE***

The Lawyers' Committee for Civil Rights Under Law is a nonprofit corporation which was organized at the request of President Kennedy to involve private lawyers throughout the nation in the struggle to assure equal civil rights for all Americans. The Committee's membership includes two former Attorneys General, twelve past Presi-

dents of the American Bar Association, and a number of law school deans, as well as many of the nation's leading attorneys. Through its national office and its offices in Jackson, Mississippi and twelve other cities, the Lawyers' Committee has actively engaged the services of over a thousand members of the private bar in addressing legal problems in such areas as voting, education, employment, housing, and the administration of justice. The *amicus* has long been concerned about awards of attorneys' fees as an element of appropriate relief in actions affecting the rights of poor people and members of minority groups.

## INTRODUCTION

This case involves one phase of the litigation concerning the desegregation of the Richmond public schools.<sup>1</sup> The District Court, as an element of relief granted to the successful plaintiffs, awarded attorneys' fees and taxed them against the defendant school board as part of costs (Pet. App. 113a). The Court of Appeals for the Fourth Circuit reversed, holding that the District Court was powerless to make such an award (Pet. App. 160a).

The *amicus* believes that this is the first civil rights case in which an award of attorneys' fees by a district court has been reversed by a court of appeals. It is a case in which there are several well-established justifications for awarding fees and in which a district court has awarded fees in accordance with its duty to fashion effective and

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<sup>1</sup> This case does not involve orders of the District Court regarding Henrico and Chesterfield Counties which this Court considered in *Richmond School Board v. Virginia State Board of Education*, — U.S. —, 93 S. Ct. 1952 (1973), or attorneys' fees in connection therewith.

appropriate relief. It is a case in which a court of appeals has held that equity courts have no authority to go beyond explicit statutory remedies and award attorneys' fees, even when an award of fees is necessary to effectuate strong constitutional and statutory policies and to do justice under the circumstances.

### QUESTIONS PRESENTED

1. Whether federal courts are prohibited from awarding attorneys' fees to successful plaintiffs in equitable actions where the defendant is an entity whose resources are held for the benefit of a class and the action confers a substantial nonpecuniary benefit on that class.

2. Whether, in the absence of explicit statutory authorization, federal courts are prohibited from awarding attorneys' fees to successful plaintiffs in actions which effectuate strong constitutional or statutory policies largely dependent on private litigation for their enforcement.

### SUMMARY OF ARGUMENT

The District Court's award of attorneys' fees ought to be sustained on either or both of two well-established equitable grounds. *First*, the award should be sustained because this action benefitted the people of Richmond, Virginia—the class for the benefit of whom the resources of the defendant school board are supposed to be used. Thus, taxing attorneys' fees against defendants is an appropriate equitable device for spreading the costs of this action over the entire class benefitting from it, thereby preventing unjust enrichment. *Second*, the award should be

sustained because it was necessary for full and appropriate relief under the circumstances of this case. When a strong constitutional or statutory policy is largely dependent on private litigation for its enforcement, and when such litigation is undertaken by poor plaintiffs seeking injunctive relief, an award of attorneys' fees is appropriate to provide effective enforcement for the constitutional or statutory policy and to prevent fundamental rights from becoming meaningless for lack of enforcement.

In reversing the District Court's award, the Court of Appeals for the Fourth Circuit refused to apply the first of these rationales—the class benefit rationale—because it takes the position that this rationale is applicable only in cases where the benefit to the class is pecuniary or “quasi-pecuniary” in nature. This erroneous position is in direct conflict with numerous decisions of this Court and other courts of appeals. The Fourth Circuit rejected the second rationale—the full-and-appropriate-relief rationale—on the ground that attorneys' fees may not be awarded in order to provide effective enforcement for constitutional or statutory guarantees unless there is an explicit statutory provision authorizing such awards. This proposition is also in direct conflict with numerous holdings of this Court and other courts of appeals. If allowed to stand, it would undermine the ability of courts of equity to tailor remedies to fit the facts of individual cases and to fashion practical and effective relief. It is a challenge to one of the essential powers of courts of equity.

Where, as here, the two above-described equitable rationales are both present in one case, an award of fees is especially appropriate, and the Fourth Circuit erred in reversing the District Court's award of fees.



## ARGUMENT

The decision of the Fourth Circuit in this case conflicts with numerous decisions of this Court and other courts of appeals, challenges fundamental principles of equity, and would effectively nullify important constitutional and statutory policies by stripping them of an effective means of enforcement. The Fourth Circuit's opinion is broad in scope and would severely restrict the exercise of equity powers in civil rights cases, labor cases, environmental cases, and many other kinds of cases in which remedies not specifically set forth in statutes may be appropriate.

Decisions of this Court and other federal courts have stated two grounds for equitable awards of attorneys' fees to successful plaintiffs in cases not involving contracts for the payment of attorneys' fees, statutes specifically authorizing awards of fees,<sup>2</sup> or improper conduct on the part of a litigant.<sup>3</sup> They can be called the "class benefit rationale" and the "full-and-appropriate-relief rationale."

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<sup>2</sup> The petitioners argue that a statutory provision for awarding attorneys' fees, Section 718 of the Emergency School Aid Act of 1972, is applicable to the instant case. Although we agree with this position, we wish to focus on other aspects of the Court of Appeals' decision because we are primarily concerned about what we regard as even more fundamental and far-reaching errors in that decision which go to the very heart of the equity powers of the federal courts.

<sup>3</sup> The District Court found, and petitioners maintain, that attorneys' fees were warranted, *inter alia*, because of defendants' obdurate obstinacy in the instant litigation. The court of appeals overturned the district court's finding of fact on this issue. We submit that, in overturning the finding of the district court, the court of appeals exceeded the proper scope of appellate review and employed an incorrect standard for school boards' responsibility to desegregate public schools. For the reason indicated in note 1 above, however, we do not wish to discuss these points, which are being fully argued by the petitioners.

These two rationales are distinct, although their spheres of application overlap to some extent.

***The class benefit rationale***

The class benefit rationale originated in *Trustees v. Greenough*, 105 U.S. 527 (1882), and has been progressively developed by this Court in *Sprague v. Ticonic National Bank*, 307 U.S. 161 (1939), *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375 (1970) and *Hall v. Cole*, — U.S. —, 93 S. Ct. 1943 (1973).

*Trustees v. Greenough* was a class action on behalf of bondholders against trustees of a fund which was pledged as security for their bonds. Plaintiff in that case alleged that the fund was being wasted and sought to preserve it as security for the bonds. This Court held that attorneys' fees should be awarded to the successful plaintiff on the following grounds:

"It would be very hard on him to turn him away without any allowance except the paltry sum which could be taxed under the fee-bill. It would not only be unjust to him, but it would give to the other parties entitled to participate in the benefits of the fund an unfair advantage. He has worked for them as well as for himself; and if he cannot be reimbursed out of the fund itself, they ought to contribute their due proportion of the expenses which he has fairly incurred. To make them a charge upon the fund is the most equitable way of securing such contribution." 105 U.S. at 532.

In *Sprague v. Ticonic National Bank*, this Court reaffirmed the rule of *Trustees* and extended it to cover cases which were not formally class actions, but which achieved results benefiting a class:

"Plainly the foundation for the historic practice of granting reimbursement for the costs of litigation other than the conventional taxable costs is part of the original authority of the chancellor to do equity in a particular situation. Whether one professes to sue representatively or formally makes a fund available for others may, of course, be a relevant circumstance in making the fund liable for his costs in producing it. But when such a fund is for all practical purposes created for the benefit of others, the formalities of the litigation—the absence of an avowed class suit or the creation of a fund, as it were, through *stare decisis* rather than through a decree—hardly touch the power of equity in doing justice as between a party and the beneficiaries of his litigation. As in much else that pertains to equitable jurisdiction, individualization in the exercise of a discretionary power will alone retain equity as a living system and save it from sterility." 307 U.S. at 166-67.

The awards of attorneys' fees to plaintiffs in *Trustees* and *Sprague* were not punitive and were not based on any wrongdoing by defendants in the course of the litigation. The awarding of counsel fees out of funds produced or conserved by the actions was merely a device for preventing unjust enrichment by distributing the costs of litigation among its beneficiaries.

*Mills v. Electric Auto-Lite* was a stockholders' derivative action under the Securities Exchange Act of 1934 alleging that the corporation had obtained stockholders' approval for a merger by means of a misleading proxy solicitation. Plaintiffs prevailed on the merits, and this Court held

that the therapeutic service of bringing the corporation into compliance with the securities laws was a substantial benefit to the class of shareholders and warranted distributing the costs of the action over all the shareholders by taxing those costs against the defendant corporation. *Mills* extended the principles of *Trustees* and *Sprague* in two ways: *First*, it imposed the successful plaintiffs' legal costs directly upon the defendant, rather than on a fund held by the defendant, because the defendant's entire treasury was held for the benefit of the class benefiting from the action. *Second*, it specifically held that the class benefit rationale was not limited to cases involving the creation or preservation of a pecuniary fund and extended to actions conferring non-pecuniary benefits as well:

"The fact that this suit has not yet produced, and may never produce, a monetary recovery from which the fees could be paid does not preclude an award based on this rationale. Although the earliest cases recognizing a right to reimbursement involved litigation that had produced or preserved a 'common fund' for the benefit of a group, nothing in these cases indicates that the suit must actually bring money into the court as a prerequisite to the court's power to order reimbursement of expenses." 396 U.S. at 392.

Only last May, in *Hall v. Cole*, this Court approved the *Mills* Court's holding that the class benefit rationale extended "not only to litigation that confers a monetary benefit on others, but also to litigation " "which corrects or prevents an abuse which would be prejudicial to the rights and interests" " of those others," *id.* at — U.S. — n. 7, 93 S. Ct. 1946 n. 7. In *Hall*, the plaintiff had been expelled from

his union for criticism of the union's leadership. He sued union officials under the LMRDA, claiming that his expulsion violated his right of free speech. The District Court found that his rights had been violated, ordered him reinstated in the union, and awarded him attorneys' fees. The Second Circuit affirmed. This Court upheld the allowance of attorneys' fees and reaffirmed the principle that the class benefit rationale extended to cases involving non-pecuniary, "therapeutic" benefits such as the protection of freedom of speech. The District of Columbia Circuit reached a similar result in *Yablonski v. United Mine Workers of America*, 466 F.2d 424 (D. C. Cir. 1972), *cert. denied*, — U.S. —, 93 S. Ct. 2729 (1973).

The class benefit theory has most commonly been employed in cases like *Mills* and *Hall* where the defendants were private entities which held their resources for the benefit of some class and had fiduciary obligations toward that class. Courts have seen fit to tax attorneys' fees against such defendants in appropriate cases for two reasons. First, it would be unjust enrichment for other members of the class to benefit as "free riders" from the efforts and expenditures made by one plaintiff. Second, since many suits benefitting large classes involve relatively small injuries to each of many members of a class, and since the costs of litigating such suits may be substantial, as a practical matter, unless the burden of attorneys' fees is distributed over the entire class, the relief obtained by a single plaintiff might not be sufficient to warrant his bringing the action. Therefore, unless attorneys' fees were awarded in such cases, litigation to redress many widely dispersed injuries or injustices might be effectively foreclosed.

The underlying principles of the class benefit theory are especially applicable where, as in this case, the defendant is a governmental entity with fiduciary obligations to the public. See *Sims v. Amos*, 340 F. Supp. 691 (M.D. Ala.), *aff'd*, 409 U.S. 942 (1972). The resources of the defendant school board are supposed to be used to provide lawful public education for the children of Richmond. Public education not only benefits the children of Richmond—by enriching their lives culturally and improving their economic opportunities; it also benefits the Richmond community as a whole—by contributing toward a more productive economy and a better educated citizenry. *Rice v. Commonwealth*, 188 Va. 224, 49 S.E. 2d 342 (1948).

Petitioners have compelled the defendant School Board to eliminate certain unlawful, discriminatory practices from the Richmond public school system. The residents of Richmond have benefitted from this vindication of Fourteenth Amendment rights, just as the defendant-corporation's stockholders benefitted from the protection of corporate suffrage in *Mills* and just as the defendant-union's members benefitted from the protection of freedom of speech in *Hall*.

In reversing the District Court's award of attorneys' fees, the Court of Appeals for the Fourth Circuit acknowledged that *Mills* called for taxing attorneys' fees against defendants in cases where the defendant's resources are held for the benefit of the same class that benefits from the action (Pet. App. 181a). But the court would not apply the class benefit rationale to this case—presumably because the benefit conferred here was not "pecuniary."<sup>4</sup>

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<sup>4</sup> The Fourth Circuit's opinion did not discuss the application of the class benefit rationale to this case. However, its opinion in *Brewer v. School Board of the City of Norfolk*, 456 F.2d 943 (4th

The Fourth Circuit's requirement of a pecuniary benefit for the application of the class benefit rationale is in direct conflict with the decisions of this Court in *Mills* and *Hall*, which explicitly approved the application of that rationale to actions conferring non-pecuniary, "therapeutic" benefits.

***The Full-and-Appropriate-Relief Rationale***

Numerous decisions of this Court have held generally that where a right has been created by the Constitution or by statute, courts should exercise their equity powers to fashion relief that will be effective in enforcing that right and appropriate under the circumstances of the case. *Swann v. Board of Education*, 402 U.S. 1 (1971); *J. I. Case Co. v. Borak*, 377 U.S. 426 (1964); *Mitchell v. DeMario Jewelry, Inc.*, 361 U.S. 288 (1960); *Porter v. Warner Holding Co.*, 328 U.S. 395 (1946); *Bell v. Hood*, 327 U.S. 678 (1946); *Hecht Co. v. Bowles*, 321 U.S. 321 (1944); *Deckert v. Independence Shares Corp.*, 311 U.S. 282 (1940).

"... [W]here federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief. And it is also well settled that where legal rights have been invaded, and a federal

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Cir.), *cert. denied*, 406 U.S. 933 (1972) (which was handed down a few months before its opinion in this case and was written by the same judge) clearly states that court's requirement that a benefit be *pecuniary* in order to warrant the application of the class benefit rationale. *Id.* at 951-52. The only difference between *Brewer* and the instant case as far as the issue of attorneys' fees is concerned is that the benefit in *Brewer*—free transportation—could be characterized as being "pecuniary," whereas the benefit here—desegregation—is less susceptible to monetary evaluation. The Fourth Circuit granted attorneys' fees in *Brewer* and denied them here, thereby implicitly invoking its requirement of a pecuniary benefit.

statute provides for a general right to sue for such invasion, federal courts may use any available remedy to make good the wrong done." *Bell v. Hood*, 327 U.S. at 684.

"... [W]hen Congress entrusts to an equity court the enforcement of prohibitions contained in a regulatory enactment, it must be taken to have acted cognizant of the historic power of equity to provide complete relief in light of the statutory purposes. As this Court long ago recognized, 'there is inherent in the Courts of Equity a jurisdiction to . . . give effect to the policy of the legislature.' *Clark v. Smith*, 13 Pet. 195, 203." *Mitchell v. DeMario Jewelry, Inc.*, 361 U.S. 288, 291-292 (1960).

This Court held in *Virginian Ry. Co. v. System Federation No. 40, Railway Employees* that these equitable powers assume an even broader and more flexible character when the public interest, and not just a private controversy, is at stake. 300 U.S. 515 (1937).

In applying these general principles, this Court and several courts of appeals have held specifically that, where a Constitutional or statutory right is largely dependent on private litigation for its enforcement, courts should award attorneys' fees to successful plaintiffs in appropriate cases in order to prevent that right from becoming meaningless for lack of enforcement, *Newman v. Piggie Park Enterprises*, 390 U.S. 400 (1968); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375 (1970); *Donahue v. Staunton*, 471 F.2d 475 (7th Cir. 1972), *cert. denied*, — U.S. —, 93 S. Ct. 1419 (1973); *Cooper v. Allen*, 467 F.2d 836 (5th Cir. 1972); *Knight v. Auciello*, 453 F.2d 852 (1st Cir. 1972); *Lee v. Southern Home Sites Corp.*, 444 F.2d 143 (5th Cir. 1971);



*Gartner v. Soloner*, 384 F.2d 348 (3d Cir. 1967), *cert. denied*, 390 U.S. 1040 (1968); *Johnson v. Nelson*, 325 F.2d 646 (8th Cir. 1963); *Cole v. Hall*, 462 F.2d 777 (2d Cir. 1972), *aff'd sub nom. Hall v. Cole*, — U.S. —, 93 S. Ct. 1943 (1973). As Justice Clark stated in *Cole*,

“Not to award counsel fees in cases such as this would be tantamount to repealing the Act itself by frustrating its basic purpose. . . . Counsel fees in cases of this kind are not only appropriate, they are imperative to preserve the Congressional purpose. . . . Without counsel fees the grant of federal jurisdiction is but a gesture . . . .” 462 F.2d at 780-81.

Although many public-spirited lawyers undertake *pro bono publico* legal activities, the number of nonpaying cases they can absorb is only a fraction of those that deserve to be litigated. Thus if the enforcement of public policy in certain areas is left up to private litigation and the prosecution of such litigation is made largely dependent on lawyers' charitable instincts, fundamental rights intended to be protected by law may be effectively extinguished for many people. As the District Court said,

“The private lawyer in such a case most accurately may be described as a ‘private attorney general.’ Whatever the conduct of defendants may have been, it is intolerably anomalous that counsel entrusted with guaranteeing the effectuation of a public policy of nondiscrimination as to a large proportion of citizens should be compelled to look to himself or to private individuals for the resources needed to make his proof. The fulfillment of constitutional guarantees, when to do so profoundly alters a key social institution and

causes reverberations of untraceable extent throughout the community, is not a private matter." (Pet. App. 139a-40a.)

These considerations are particularly compelling where, as in the instant case, the litigation costs are high, the plaintiffs are poor, and the relief sought is injunctive. See *La Raza Unida v. Volpe*, 57 F.R.D. 94 (N.D. Cal. 1972), *appeal docketed*, No. 73-1145, 9th Cir., Jan. 29, 1973.

In reversing the District Court's award in the case at bar, the Fourth Circuit held that, in the absence of explicit statutory authorization, courts are not permitted to award attorneys' fees as a means of providing effective enforcement for Constitutional or statutory public policy:

"If, however, an award of attorneys' fees is to be made as a means of implementing public policy, as the District Court indicates in its exposition of its alternative ground of award, it must normally find its warrant for such action in statutory authority." (Pet. App. 179a-80a.)

"We find ourselves in agreement with the conclusion that if such awards are to be made to promote the public policy expressed in legislative action, they should be authorized by Congress and not by the courts." (Pet. App. 185a.)

This holding is completely at odds with decisions of this Court as to when equitable awards may be granted:

"... the comprehensiveness of this equitable jurisdiction is not to be denied or limited in the absence of a clear and valid legislative command. Unless a statute in so many words, or by a necessary and in-

escapable inference, restricts the court's jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied." *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946).

It is true that this Court held in *Fleischmann Distilling Corp. v. Maier Brewing Co.*, 386 U.S. 714 (1967), a Lanham Act case, that a clear Congressional intent to preclude awards of attorneys' fees in a certain area of law must be respected by the courts. However, in *Mills* this Court limited the *Fleischmann* holding to situations in which Congress had clearly "marked the boundaries of the power to award monetary relief" by providing a "meticulously detailed" pattern of statutory remedies. 396 U.S. at 391.

It is one thing to say that the specific terms of a statute, its legislative history, or a "meticulously detailed" pattern of remedies may indicate a Congressional intent to prohibit awards of attorneys' fees. But it is something else to assert, as the Court of Appeals did in the instant case, that "when Congress omits to provide specially for the allowance of attorney's fees in a statutory scheme designed to further a public policy, it may be fairly accepted that it did so purposefully. . . ." (Pet. App. 184a.)

In *Hall v. Cole*, *supra*, this Court reiterated the rule of *Fleischmann* and *Mills*, saying that "even where 'fee-shifting' would be appropriate as a matter of equity, Congress has the power to circumscribe such relief," — U.S. —, 93 S. Ct. 1948. Thus, *Hall*, like *Fleischmann* and *Mills*, indicates that courts may grant attorneys' fees *unless* Congress has forbidden such an award, and not, as the Fourth Circuit would have it, *only* when Congress specifically authorizes the award.

42 U.S.C. § 1983 is a broad provision designed to create a general right of action to protect rights guaranteed by the Fourteenth Amendment. Its legislative history does not indicate a Congressional intent to preclude equitable awards of attorneys' fees.<sup>5</sup> Unlike the sections of the Lanham

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<sup>5</sup> If there can be any inference at all about what specific remedies Congress envisioned when it passed 42 U.S.C. § 1983, it would be that awards of attorneys' fees were contemplated. Section 1983 was originally section 1 of the Act of April 20, 1871, 17 Stat. 13. The original version of that section, after creating a cause of action, provided as follows:

"... such proceeding to be prosecuted in the several district or circuit courts of the United States, with and subject to the same rights of appeal, review upon error, and other remedies provided in like cases in such courts, under the provisions of the act of the ninth of April, eighteen hundred and sixty-six, entitled 'An act to protect all persons in the United States in their civil rights, and to furnish the means of their vindication'; and the other remedial laws of the United States which are in their nature applicable in such cases."

This was a clear direction to search as widely as possible for effective remedies, and especially to search among other remedies created by Congress in other civil rights laws. This command is reinforced by the reference to the Act of April 9, 1866 (14 Stat. 27), because the 1866 statute was largely concerned with seeking effective remedies. In following Congress' directions to seek remedies from among its own civil rights laws, one need look no further than a law passed 11 months earlier, the Act of May 31, 1870, 16 Stat. 140. This statute, designed to protect the right to vote, created civil causes of action in §§ 2, 3 and 4 and provided that offenders should

"forfeit and pay the sum of five hundred dollars to the person aggrieved thereby, to be recovered by an action on the case, with full costs, and such allowance for counsel fees as the court shall deem just; and shall also, for every such offense, be deemed guilty of a misdemeanor, and shall, on conviction thereof, be fined not less than five hundred dollars, or be imprisoned not less than one month and not more than one year, or both, at the decision of the court."

The relationship of the Act of May 31, 1870, to the other civil rights statutes is further strengthened by the fact that § 16 of the Act of May 31, 1870, re-enacted a portion of § 1 of the Act of

Act considered in *Fleischmann*, it is not part of a "meticulously detailed" pattern of remedies indicating a clear Congressional intent to preclude awards of fees. Furthermore, it cannot be maintained that provisions for attorneys' fees in sections of the Civil Rights Act of 1964 evince a Congressional intent to disallow awards of fees in suits under 42 U.S.C. § 1983. Congressional actions in 1964 are not relevant to determining the intent of Congress in 1871, and the notion that statutory provisions for attorneys' fees in certain kinds of cases imply an intent to disallow awards of fees in other, similar kinds of cases was rejected by this Court in *Mills*, 396 U.S. at 390-91, and *Hall*, — U.S. at —, 93 S. Ct. at 1949.

The very essence of equity is its ability to consider the pragmatic realities of a case and to order relief that will be effective in enforcing the law and doing justice in the context of those realities. If equity is to perform this vital function, it cannot be restricted to explicit statutory remedies, except where Congress has indicated a clear intent so to restrict it. The District Court recognized that, considering the history of this case and the character of school desegregation cases in general, a denial of attorneys' fees would hamper and discourage litigation that was necessary to enforce strong statutory policies and to protect funda-

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April 9, 1866 (now codified as 42 U.S.C. § 1981), and § 18 of the Act of May 31, 1870, explicitly re-enacted the entire Act of April 9, 1866.

Thus when Congress passed its statute on April 20, 1871, directing the courts to apply "other remedies provided in like cases" and "the other remedial laws of the United States which are in their nature applicable in such cases", it must have contemplated that one such remedy might be provision for counsel fees, which it had explicitly authorized in a civil rights law passed only 11 months before.

mental Constitutional rights. The District Court also recognized that justice required that the defendant school board compensate plaintiffs' attorneys for the services they had performed for the school district. The Fourth Circuit did not deny that plaintiffs' attorneys had performed a valuable service for the school district. Nor did it deny that the award of attorneys' fees would be an effective device for enforcing the law. Rather it took the position that, where Congress has failed to provide explicitly for awards of attorneys' fees, it "would be an unwarranted exercise of judicial power" for courts to employ awards of attorneys' fees in order to effectuate Congressional policies (Pet. App. 184a). The Fourth Circuit thus singled out awards of attorneys' fees as being somehow different from other equitable remedies and requiring specific Congressional authorization. The Fourth Circuit's position is contrary to decisions of this Court which give broad discretion to district courts in framing equitable relief and which approve the use of non-statutory remedies, including awards of attorneys' fees, in appropriate cases in equity.

### CONCLUSION

As the District Court said, "Power over public education carries with it the duty to provide that education in a constitutional manner, a duty in which the defendants failed." (Pet. App. 137a.) When the defendants failed in this duty, plaintiffs, and their public-spirited attorneys, assumed the burden of eliminating unlawful racial discrimination from Richmond's public schools. By successfully litigating this action these impecunious school children and their attorneys have benefitted not only black school children,

but white school children, parents and other citizens of Richmond too. The service they have performed—that of ensuring that public schools are operated in accordance with the law—is one which should be performed by public officials at public expense. The beneficiaries of the action are the very people for whose benefit the resources of the Richmond school board are supposed to be used.\*

This suit has enforced one of our most fundamental constitutional and statutory policies—the right to equality in educational opportunity. It arose in a statutory context in which private suits are an important means of enforcement. Moreover, as the district court said,

“ . . . this sort of case is an enterprise on which any private individual should shudder to embark. No substantial damage award is ever likely, and yet the costs of proving a case for injunctive relief are high. To secure counsel willing to undertake the job of trial . . . necessarily means that someone—plaintiff or lawyer—must make a great sacrifice unless equity intervenes.”  
(Pet. App. 136a)

When either the class benefit rationale or the full-and-appropriate-relief rationale is applicable, a court of equity should grant attorneys' fees to a successful private plaintiff, except where there is a clear Congressional intent to preclude such an award. In this case, as in *Sims v. Amos*, *supra*, both the class benefit rationale and the full-and-appropriate-relief rationale apply, and there are no indi-

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\* The school board has expended a substantial sum in defending this action. It would be ironic indeed for the taxpayers to pay for opposition to desegregation required by law and for private parties to bear the burden of bringing the school system into compliance with the law.

cations of a Congressional intent to preclude awards of fees. The District Court's award of attorneys' fees was in keeping with the rule that equity should fashion relief that is effective and appropriate under the circumstances. In spite of all this, and in spite of the well-established principle that district courts sitting in equity have broad discretion in framing relief, the Court of Appeals overturned the District Court's award.

The Court of Appeals based its reversal of the District Court's award on two grounds. One was explicit: Courts may not grant attorneys' fees on the basis of the full-and-appropriate-relief rationale without specific statutory authorization. The other was implicit: The class benefit rationale for awarding attorneys' fees does not apply unless the benefit to the class is pecuniary. Both these propositions are directly at odds with decisions of this Court and other courts of appeals.

The decision of the Fourth Circuit strikes at the heart of the equity powers of the courts. It would undermine a well-established equitable device for preventing unjust enrichment, and it would restrict courts to a wooden application of explicit statutory remedies. It would greatly impair the ability of the courts to deal fairly and flexibly with equitable claims and to provide effective protection for rights guaranteed by the Constitution and statutes of the United States.



**For the foregoing reasons, the decision of the Court of Appeals should be reversed, and the order of the District Court reinstated.**

Respectfully submitted,

CECIL WRAY, JR.  
*Counsel for Amicus Curiae*

GEORGE N. LINDSAY  
WILLIAM H. McDAVID  
Debevoise, Plimpton,  
Lyons & Gates

DAVIS S. TATEL  
ARMAND DERFNER  
Lawyers' Committee for  
Civil Rights Under Law

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